

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

July 30, 2010

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:04 p.m. in the Council Chambers, 200 East Main Street, on July 30, 2010. He stated that, contrary to his statement at the end of last month's meeting, his term on the Board had not yet ended, to the possible dismay of many.

Members present were Chairman Peter Brown, Barry Stumbo, Louis Stout, James Griggs, Kathryn Moore and Noel White. Member Jan Meyer was absent. Others present were Jim Hume, George Dillon and Mark Newberg, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Department of Law. Staff members in attendance were Jim Marx, Bill Sallee and Wanda Howard.

Swearing of Witnesses – Prior to sounding the agenda, the Chairman asked all those present who wished to speak at today's meeting to raise their right hand and be sworn. The oath was administered to numerous citizens in attendance.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the December 11, 2009 meeting would be considered at this time.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Griggs, and carried unanimously (Meyer absent) to approve the minutes of the of the December 11, 2009 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **C-2010-66: VINEYARD COMMUNITY CHURCH** - appeals for a conditional use permit to occupy an existing building (former school) as a church in a Single Family Residential (R-1C) zone, on property located at 350 Henry Clay Boulevard (Council District 5).

The Staff Recommended: Postponement, for the following reasons:

- a. Additional time is needed to obtain a more complete understanding of the scale of the church's proposed ministries at this location and how they will be implemented. While some of the proposed ministries may be "customary" for a typical church, others may not, which may impact the extent to which a particular ministry is appropriately limited or restricted by the Board to ensure that an established residential community is not adversely impacted.
- b. More detailed and quantitative assessments are needed to determine the extent to which this proposed church will have to be supported by on-street parking, since only the minimum amount of off-street parking is being proposed. Then a thorough evaluation should be undertaken to predict how that might impact the use of local streets and be disturbing to area residents.
- c. The feasibility and potential impacts associated with expanding the existing parking lot into open space on the southeast side of the property, although not currently proposed by the appellant, should be determined. Such an evaluation will require at least a conceptual engineering assessment and review of this neighborhood's water drainage characteristics, as well as some understanding of the trade-offs associated with preserving more open space but concurrently relying on street parking to support the church's parking needs.

Representation – Mr. Bruce Simpson, attorney for the appellant, was present. Mr. Simpson requested a one month postponement of this request, based upon the staff recommendation.

Discussion – Mr. Steve Ruschell, attorney for the Fairway Neighborhood Association, stated that his client did not object to the postponement. However, he said that the staff also recommended that the Board consider holding a special meeting for this appeal. The FNA would suggest September 17 as the date for that hearing.

Chairman Brown thought that this matter should be postponed to the Board's August meeting, in the hope that this would be resolved. Mr. Simpson agreed with the Chair. He did not believe that this case was that complex, and that it could be heard that day.

Mr. Ruschell asked if the staff could comment on their recommendation. Mr. Sallee replied that the staff suggested a special meeting date be considered because of the great interest in this request by citizens, and to ensure the ability for all of them to be heard regarding this application.

Chairman Brown said that the staff had prepared a list of dates that the Council Chambers would be available for a special meeting. Mr. Ruschell suggested September 17 because it is a Friday. Mr. Simpson replied that there are certain legal issues for the church to move forward with the property owner, so he suggested keeping the August 27 meeting date as suggested by the Chair. He was agreeable to the Board imposing time limits for that case, if desired.

Mr. Griggs stated that the Staff Report indicated that the Traffic Engineering Division needed more time to complete a study of on-street parking in the area, and wondered if a one-month postponement would allow enough time for that study. Mr. Gallimore replied that he believed so, but that their report would not be very definitive, as his office will need to estimate traffic patterns, since the church is not located there currently. He said that his office did not possess any demographic data about the church goers.

Action – A motion was made by Ms. Moore, seconded by Ms. White and carried unanimously (Meyer absent) to postpone **C-2010-66: VINEYARD COMMUNITY CHURCH** – an appeal for a conditional use permit to occupy an existing building (former school) as a church in a Single Family Residential (R-1C) zone, on property located at 350 Henry Clay Boulevard to the Board's August meeting.

- b. **V-2010-71: JAMES BAILEY** - appeals for variances to: 1) reduce the required parking from 4 to 2 spaces; 2) reduce the required side yard from 6 feet to 3 feet; and 3) to reduce the required front yard from 30 feet to 0 feet to construct a 2-story duplex and off-street parking in a Two Family Residential (R-2) zone, on property located at 329 Hickory Street (Council District 2).

The Staff Recommended: Approval of a side yard variance, from 6' to 3', along the westerly side property line, for the following reasons:

- a. Granting such a variance will allow a new building to be constructed that closely duplicates the location of the existing dwelling on the subject property. As such, there should not be any adverse impact to the public health, safety or welfare, and no alteration to the established character of the general vicinity.
- b. The narrow width of the lot (33') and the location of the existing residence on the lot are special circumstances that contribute to justifying some reduction in the required side yard at this location.
- c. Strict application of the Zoning Ordinance would be unreasonably restrictive, given the narrow width of the lot and the historical use of the property with a nonconforming side yard along the westerly side property line.
- d. The appellant is making a reasonable effort to redevelop the subject property, with no evidence of any intent to circumvent the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. Any new building shall be constructed in accordance with a revised site plan indicating compliance with all other yard requirements as well as off-street parking requirements.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

The Staff Recommended: Disapproval of the remaining variance requests, for the following reasons:

- a. Granting the remaining variances that have been requested will significantly alter the established character of this older neighborhood and will contribute to congested on-street parking conditions on Hickory Street. Paved parking areas in the front yards of residences is atypical of properties in the general vicinity, and the demand for on-street parking is already high due to the prevalence of residences that have no off-street parking.
- b. There are no special circumstances pertaining to the subject property or the general vicinity that support a reduction in required off-street parking, concurrent with a reduction in the required front yard all the way to 0' from the right-of-way. To the contrary, the existing neighborhood circumstances relating to the location of off-street parking areas and on-street parking conditions support that the current Zoning Ordinance requirements should be maintained.
- c. Strict application of the Zoning Ordinance will not unreasonably restrict use of the subject property or create an unnecessary hardship for the appellant. The lot can be redeveloped with a single family

residential use or possibly a more compatible duplex, which is typical of this neighborhood.

- c. **V-2010-72: JAMES BAILEY** - appeals for variances to: 1) reduce the required parking from 4 to 2 spaces; and 2) reduce the required front yard from 30 feet to 0 feet for off-street parking to construct a 2-story duplex in a Two Family Residential (R-2) zone, on property located at 732 Whitney Avenue (Council District 2).

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the extent of the requested variances will significantly degrade the established character of this older neighborhood and will contribute to congested on-street parking conditions on Whitney Avenue. Paved parking areas in the front yards of residences is atypical of properties in the general vicinity, and the demand for on-street parking is already high due to the prevalence of residences that have no off-street parking.
- b. There are no special circumstances pertaining to the subject property or the general vicinity that support a reduction in required off-street parking, concurrent with a reduction in the required front yard all the way to 0'. To the contrary, the existing neighborhood circumstances relating to the location of off-street parking areas and on-street parking demands support that the current Zoning Ordinance requirements should be maintained.
- c. Strict application of the Zoning Ordinance will not unreasonably restrict use of the subject property or create an unnecessary hardship for the appellant. The lot is currently vacant, and a single family residential use could easily be reestablished, or a smaller duplex could be constructed on the property, without the need for any variances.

Representation – Mr. Larry Morton, developer, was present for these two applications. He requested a one-month postponement of both applications.

Action – A motion was made by Mr. Griggs, seconded by Ms. Moore, and carried unanimously (Meyer absent) to postpone **V-2010-71: JAMES BAILEY** and **V-2010-72: JAMES BAILEY** to the Board's August meeting.

- d. **V-2010-62: BETTER BUSINESS BUREAU OF CENTRAL KENTUCKY** - appeals for a variance to reduce the required rear yard from 25' to 0' in order to retain a building addition in a Professional Office (P-1) zone, on property located at 1460 Newtown Pike (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor significantly alter the character of the general vicinity. The glassed enclosure is only visible from the golf course, where there is a heavily landscaped 25' buffer between the rear property line and the improved part of the course.
- b. The patio that existed prior to erection of the enclosure, in conjunction with the construction of the office building prior to development of the adjacent golf course, create a unique circumstance and contribute to justifying a reduction along this property boundary.
- c. Strict application of the Zoning Ordinance would require that the addition be removed entirely, which would result in an unnecessary hardship to the occupants of the office building, with little or no benefit to the recreational use of the adjoining property.
- d. The circumstances surrounding this variance request have resulted, at least in part, from the original location of the office building so close to the property line. However, a good faith effort is now being made to rectify a problem that has gone unnoticed for several years.

This recommendation of approval is made subject to the following conditions:

1. The enclosure may remain in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. A building permit shall be obtained from the Division of Building Inspection within 30 days following action by the Board.
3. Action of the Board shall be noted on an amended Final Development Plan for the subject property.
4. The variance is granted only for the purpose of allowing the enclosure to remain as constructed.

Representation – Mr. Roger Ladenberger, landscape architect, was present on behalf of the appellant. He requested a postponement of this request to the Board's September meeting.

Action – A motion was made by Ms. White, seconded by Mr. Griggs, and carried unanimously (Meyer absent) to postpone **V-2010-62: BETTER BUSINESS BUREAU OF CENTRAL KENTUCKY** – an appeal

for a variance to reduce the required rear yard from 25' to 0' in order to retain a building addition in a Professional Office (P-1) zone, on property located at 1460 Newtown Pike, to the Board's September meeting.

2. No Discussion Items - The Chair will ask if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

- a. **Y-2010-73: DON A. WATHEN and JEAN C. WEAVER** - appeal for a variance to reduce the required front yard from 20 feet to 3 feet in order to place a canopy over an existing patio in a Neighborhood Business (B-1) zone, on property located at 735 E. Main Street (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The open canopy will only cover the existing patio area that already extends to within 3' of the East Main Street right-of-way, and there is no well established character of the area or streetscape that will be negatively impacted. Visibility for drivers leaving the restaurant parking will not be impaired.
- b. The location of the existing restaurant and historical use of the outdoor patio area are special circumstances that contribute at least to some extent to justifying a front yard reduction solely for the purpose of placing an open canopy over the patio.
- c. Strict application of the Zoning Ordinance would prevent any portion of the existing patio to be covered, which might be construed as unreasonably restrictive and a potential hardship under the circumstances.
- d. The appellants are attempting to make a reasonable property improvement that should not be considered as an attempt to circumvent the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The patio cover, with no siding, shall be installed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to constructing the patio cover.
3. The action of the Board shall be noted on an amended Final Development Plan for the subject property depicting this canopy, in accordance with the requirements of Article 21 of the Zoning Ordinance.
4. The variance is granted only for the purpose of allowing the placement of a roof over the existing patio, and shall not be used to accommodate any other building addition or other type of improvement located closer to East Main Street.

Representation – Mr. Thomas Todd, attorney for the appellant, was present. He stated that his client had read the recommendation of the Staff and would agree to abide by the four recommended conditions.

Action – A motion was made by Mr. Stumbo, seconded by Ms. White and carried unanimously (Meyer absent) to approve **Y-2010-73: DON A. WATHEN and JEAN C. WEAVER** – an appeal for a variance to reduce the required front yard from 20 feet to 3 feet in order to place a canopy over an existing patio in a Neighborhood Business (B-1) zone, on property located at 735 E. Main Street, for the reasons recommended by the staff and subject to the four recommended conditions.

Mr. Todd thanked the Board for their consideration and approval.

- b. **C-2010-51: ALBERT WARFIELD** - appeals for a conditional use permit to extend the regulations of the Single Family Residential (R-1D) zone 50' into the adjoining Neighborhood Business (B-1) zone for construction of a single family residence, on property located at 6911 Greenwich Pike (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as it will result in a single family residential use that should be compatible with other residential uses in the Jimtown Rural Settlement. Adjoining properties to the north and south and to the rear of the subject property are all used for single family residential purposes, and there are no active business activities on any of the B-1 properties in the area.

- b. Sewage treatment will be handled privately, as there is room for a septic system on the front of the subject property, and public services such as police and fire protection are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The single family residence shall be constructed in accordance with the submitted application and site plan, with a minimum of 6' side yards and a 10' rear yard as specified in the Zoning Ordinance for the R-1D zone.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. Sewage treatment shall be provided in accordance with the requirements of the Board of Health.
4. Driveway access to Greenwich Pike shall be as permitted by the Kentucky Transportation Cabinet.
5. The remaining B-1 portion of the subject property shall be left as open space.

Representation – Mr. Albert Warfield was present for his appeal.

Chairman Brown stated that he recalled from a month ago that there were objectors to his appeal. He presumed that he had worked out the differences with those neighbors. Mr. Warfield replied affirmatively. Chairman Brown apologized to Mr. Warfield for speaking harshly to him at last month's meeting. Mr. Warfield replied that he fully accepted his apology.

Chairman Brown said that there was some confusion last month as to whether the new building would be placed at the rear of Mr. Warfield's lot. Mr. Warfield replied that, indeed, it would encroach 50' into the B-1 zone on the back of his lot.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stumbo and carried unanimously (Meyer absent) to approve **C-2010-51: ALBERT WARFIELD** – an appeal for a conditional use permit to extend the regulations of the Single Family Residential (R-1D) zone 50' into the adjoining Neighborhood Business (B-1) zone for construction of a single family residence, on property located at 6911 Greenwich Pike, for the reasons provided by the staff, and subject to the five recommended conditions.

Mr. Warfield thanked the Board for its approval.

- c. **C-2010-65: CHRIST THE KING EXTENDED DAYCARE** - appeals for a conditional use permit to allow the continued operation of an after-school program in a Single Family Residential (R-1C) zone, on property located at 299 Colony Boulevard (Council District 5).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. After-school child care has been provided at this location for a number of years, with no indication of any disturbances to nearby residential properties. Existing facilities will be used, and traffic management may actually benefit from having an after-school care program, as it allows a more gradual release of students through the afternoon and early evening.
- b. All necessary public facilities and services are available and adequate for the continuation of after-school child care at this location.

This recommendation of approval is made subject to the following conditions:

1. After-school child care shall be provided in accordance with the submitted application and site plan.
2. Enrollment shall not exceed 99 children, or as otherwise limited by the Kentucky Cabinet for Health and Family Services or the LFUCG Division of Fire and Emergency Services.
3. An occupancy permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board.

Representation – Ms. Traci Coupelo, Director of the Christ the King After School Program, was present for this request.

Chairman Brown commented that it appeared that this child care facility was somehow overlooked. She agreed with the Chair, and said that it had been in existence for 24 years. She said that there is no proposed change to the property in any way.

Mr. Marx said that a revision to condition #2 should be considered by the Board at this time. Mr. Marx stated that the Division of Fire doesn't review these facilities when they are permitted by the State, and

such was the case with this facility. Thus, they did not believe that they needed to be listed in condition #2. He said that the revised condition should read as follows:

2. Enrollment shall not exceed 99 children, or as otherwise limited by the Kentucky Cabinet for Health and Family Services, whichever is less ~~or the LFUCG Division of Fire and Emergency Services.~~

Chairman Brown asked Ms. Coupelo whether she agreed with the conditions recommended for this use, including the revised condition. Ms. Coupelo responded affirmatively.

Action – A motion was made by Ms. Moore, seconded by Ms. White and carried unanimously (Meyer absent) to approve **C-2010-65: CHRIST THE KING EXTENDED DAYCARE** – an appeal for a conditional use permit to allow the continued operation of an after-school program in a Single Family Residential (R-1C) zone, on property located at 299 Colony Boulevard, for the reasons provided by the staff, and subject to the three recommended conditions.

Ms. Coupelo thanked Mr. Marx for his assistance.

- d. **C-2010-67: DEBBIE BANKS** - appeals for a conditional use permit to establish a dog grooming business in a Neighborhood Business (B-1) zone, on property located at 289 S. Limestone (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The dog grooming business will be fairly limited in scope, with no more than two to four dogs to be groomed per day. Significant increases in traffic are not expected, and adequate public parking is available in the immediate area of the subject property.
- b. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The dog grooming business shall be established in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the business.
3. Overnight boarding of dogs is not allowed, and temporary boarding during the day shall only take place inside of the building for those dogs that are being groomed.
4. The ceiling and exterior walls of the suite to be occupied shall be soundproofed in accordance with the requirements of the Division of Building Inspection.

Representation – Ms. Debbie Banks, appellant, was present for her appeal.

Chairman Brown asked Ms. Banks if she had read the staff's recommendation for approval, and if she would agree to abide by the recommended conditions. Ms. Banks replied affirmatively.

Mr. Stumbo commented that the Board had received a letter from the Historic South Hill Neighborhood Association, stating that they wished for the business to be soundproofed so that there will be no noise emissions. Mr. Stumbo stated that it was his understanding that this was already a requirement for this type of use. Ms. Banks replied that it was their intent to do so.

Action – A motion was made by Mr. Stumbo, seconded by Ms. White and carried unanimously (Meyer absent) to approve **C-2010-67: DEBBIE BANKS** – an appeal for a conditional use permit to establish a dog grooming business in a Neighborhood Business (B-1) zone, on property located at 289 S. Limestone, for the reasons provided by the staff and subject to the four conditions set forth by the staff.

Chairman Brown wished Ms. Banks success with her business.

- e. **C-2010-68: SMALL WORLD BILINGUAL PRESCHOOL** - appeals for a conditional use permit to establish a preschool in an existing church in a Single Family Residential (R-1C) zone, on property located at 2601 Clays Mill Road (Council District 10).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. All facilities are in place, including the required outdoor play area, to accommodate a

preschool for up to 37 children. Adequate parking is available in the church parking lot, and significant increases in traffic are not anticipated due to the limited enrollment that has been requested.

- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The preschool shall be established in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the preschool.
3. Enrollment at the preschool shall be limited to no more than 37 children, or as further limited based on occupancy restrictions set by the Kentucky Cabinet for Health and Family Services and/or the Division of Fire and Emergency Services.
4. The outdoor play area of 1,600 square feet shall be fenced and screened in accordance with the requirements of the Division of Building Inspection.

Representation – Ms. Karen Schindler was present as the appellant.

Chairman Brown briefly conversed with Ms. Schindler in Spanish, and then he asked her if she had read the staff's report, and would agree to abide by the recommended conditions. Ms. Schindler replied in the affirmative, in English.

Mr. Marx commented that a slight revision was needed to condition #3. Mr. Sallee then displayed and read the following change proposed to that condition:

3. Enrollment at the preschool shall be limited to no more than 37 children, or as further reduced ~~limited~~ based on occupancy restrictions set forth by the Kentucky Cabinet for Health and Family Services ~~and/or the Division of Fire and Emergency Services.~~

Chairman Brown asked if she would agree to abide by the revised condition as well. Ms. Schindler replied in the affirmative.

Action – A motion was made by Ms. White, seconded by Ms. Moore and carried unanimously (Meyer absent) to approve **C-2010-68: SMALL WORLD BILINGUAL PRESCHOOL** – an appeal for a conditional use permit to establish a preschool in an existing church in a Single Family Residential (R-1C) zone, on property located at 2601 Clays Mill Road, for the reasons provided by the staff and subject to the recommended conditions.

Chairman Brown wished Ms. Schindler success with her school.

- B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2010-70: JACQUELINE L. MELTON** - appeals for a variance to reduce the required side yard from 8 feet to 2 feet to add an attached garage in a Single Family Residential (R-1C) zone, on property located at 1003 Della Drive (Council District 11).

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the requested variance will result in a home addition that is not typical of this well established neighborhood, and would set a precedent that, over time, could significantly alter the character of the general vicinity.
- b. Special circumstances unique to this particular property have not been identified that support a side yard reduction of this magnitude. The location of the existing residence on the subject lot, while certainly limiting the expansion options that might be viable, is insufficient justification in and of itself, as that circumstance would have broad applicability to many other properties in the area.
- c. Strict application of the Zoning Ordinance will not unreasonably restrict the use of the property, nor create an unnecessary hardship, as other options for providing a garage and additional living space can be pursued that are more in keeping with the established character of this neighborhood.

Representation – Ms. Jacqueline Melton was present for her appeal.

Chairman Brown said that the staff had recommended disapproval of her request, so he would ask them to present their report at this time.

Staff Presentation – Mr. Marx presented the Staff Report for the requested dimensional variance. He displayed aerial photos of the subject property, and told the Board that it is a single family residence, and that a two-story addition is proposed. The first floor of the addition is to be for a single car garage and living space, while the second floor was proposed to be initially used for attic storage, but would be converted to additional living space in the future.

Mr. Marx said that the staff's main concern with this request was that this neighborhood doesn't have building additions as close as 2' to their side property lines. He also showed photos of other houses in this neighborhood. He said that the staff looked hard to find another addition to a home in this neighborhood, but just couldn't find one. He said that most homes had driveways along one entire side of the dwelling. He said that the staff could not find any unique circumstances to warrant this variance either. The staff believed that there are other options to the submitted site plan, including an addition more toward the rear of the property rather than to the side.

Discussion – Mr. Griggs said that he did believe that there was an unusual circumstance with this property, and that was the fact that the lot was shaped like a trapezoid, rather than a typical rectangle. He did not believe that there was much room available for an addition in the rear yard and thought that the shape of the lot alone would justify a side yard variance to 6'.

Mr. Griggs stated that the decks shown on the submitted site plan were currently under construction. He asked if the proper building permits had been issued for these decks, especially since one of them was at least 4' off the ground. Mr. Marx was not sure, and no one from Building Inspection replied.

Appellant's Presentation – Ms. Melton said that the shape of her lot meant that she had a very short driveway, compared to other homes in the neighborhood. She had several photographs of homes in her neighborhood that had sizeable back yards, but which also had attached garages. She submitted them for display on the overhead projector, and said that many of them were later additions to these homes, and not original construction.

Chairman Brown asked about the photo of her own home. Ms. Melton said that there was already a rear addition to the home; and that when they bought this home, the rear decks had rotted, so they were in the process of replacing them. The other photos she displayed were of homes at 702 Della Drive, 703 Della Drive, 717 Della Drive, 735 Della Drive, and 789 Della Drive, all of which had side oriented garages or carports attached to the principal dwelling. She said that there is even one home that has an addition along the entire rear wall of the dwelling, and displayed a photo of it (1010 Della Drive). She said that many homes in her neighborhood have had more recent additions, as many were originally constructed in the 1950s.

Ms. Melton displayed a photo of one home at 815 Della Drive, which had some type of two-story garage in the rear yard that was taller than the house. She said she wasn't sure whether there was a living space or an apartment on the second floor. She said that there were some buildings that didn't conform to others in

the neighborhood, but that hers would not be “tacky” or out of character. She said that the neighbors around her home were not opposed to her plan, and one neighbor even wanted to tie his fence into the one she was planning to construct.

Ms. Melton displayed a photo of the home at 898 Della Drive, which showed a two-story addition that had been made to the front of the original home, which had two lower level garages and living space in the second floor. She then displayed other photographs of homes at 1033 Della Drive, 1042 Della Drive, 1047 Della Drive and 1706 Gettysburg Drive, all of which had front-facing garages attached to the dwellings.

Ms. Melton said that her proposed addition was planned for her daughter, who had been living with her father, who just recently passed away.

Discussion – Mr. Stout asked the staff about their concern that the addition will be out of character with the neighborhood. Mr. Marx replied that that would be the case, but the staff did state in their report that there would not be any adverse impact to the nearest residence, as that home was on a more distant location on its lot. He said that the larger concern is that if several similar variances were approved in the same neighborhood, then there might be more of a concern about similar treatment for other future appellants. He said that another concern was that, if the setback is approved at only 2’ from the side lot line, there would be special building code requirements to address such a setback, including a restriction that there are no windows on that side of the addition.

Ms. Melton said that she had an unusually shaped lot; but that otherwise, she would love to be able to place this addition in her rear yard. They thought about providing an addition across the rear of the house, but her contractor advised her that it would be difficult to match the roof pitch with such an addition. This plan was formulated instead, and could better match the roof pitch, which was a concern of hers and her contractor, in order to prevent roof leaks.

Mr. Griggs asked the staff what a reasonable side yard setback would be here, since the current house was set back 19’ from the side property line. Mr. Griggs asked, with a 6’ side yard, whether Ms. Melton could still construct a 13’ addition to the side of her home. Mr. Marx replied that while he thought that a 2’ variance (from the 8’ requirement) would be reasonable, but he was not sure that the front projection would be wide enough. Mr. Griggs thought that the addition could be set back farther to be made more acceptable. Ms. Melton replied that she was most concerned about the overall look of the addition to her neighbors. She said that there were some setbacks in her photos that didn’t look very good. She was hoping to keep enough attic space to allow some room for storage. Mr. Griggs said that it appeared that the roof lines wouldn’t line up as they should, adding that he could support a variance to allow a 13’ addition, thus maintaining a 6’ side yard.

Ms. Melton asked if the Board could approve additions that could extend to the side property line. She said that her neighbor was most interested in eliminating any need to maintain grass along that line.

Chairman Brown suggested that the Board might be agreeable to a compromise that allows some type of variance, but not necessarily one to the extent that she was proposing. He suggested a continuance of this matter, to allow her to consult with her contractor. Ms. Melton asked if the Board could decide this issue today. She said that she didn’t know if this addition could be made smaller, and that she would need to discuss this with her contractor. Chairman Brown suggested that the Board consider another case at this time, in order to allow her time to consult with her contractor.

Note: The Board considered **V-2010-74: DAVID TOOLE / HUGH JASS BURGERS, LLC** at this time. Following the disposition of that case, the Chair directed that the Board return to this case.

Ms. Melton returned to the podium at this time. Chairman Brown asked if she had an opportunity to call her builder during the break. She replied that she had spoken with her contractor and that he said that a 5’ variance would be best, but that a 6’ setback from the side property line “would be tight.” Chairman Brown concluded then that there was some wiggle room here, to which Ms. Melton agreed. He asked if there was any other discussion necessary about this application.

Mr. Marx asked Ms. Melton if the side yard were approved at 5’ if that would mean that the addition would be 14’ along the front. Ms. Melton replied affirmatively. Mr. Marx agreed that Mr. Griggs’ earlier comment about the shape of the lot did have some merit; however, it was not a sufficient factor to approve the original extent of the variance requested by the appellant, but that it did justify a 5’ side yard setback. The restricted rear yard, due to the angled property line, was a significant site constraint that warranted some relief.

Ms. Moore asked if Ms. Boland could prepare findings of fact for this application. Ms. Boland replied in the affirmative, but told the Board that it would take a few minutes.

Note: The Board considered **A-2010-69: KEITH McCOLLUM** at this time. Following the disposition of that case, the Chair directed that the Board return to this case.

Ms. Boland prepared findings of fact for the Board to consider. Mr. Sallee displayed them on the overhead projector.

Action – A motion was made by Mr. Griggs and was seconded by Mr. Stout to approve **V-2010-70: JACQUELINE L. MELTON** – an appeal for a variance to reduce the required side yard from 8 feet to 5 feet to add an attached garage in a Single Family Residential (R-1C) zone, on property located at 1003 Della Drive, for the following reasons:

FINDINGS FOR APPROVAL

- a. Granting a variance from 8' down to 5' should not adversely affect the public health, safety or welfare nor alter the character of the general vicinity. Maintaining a side yard of 5' will protect the character of the neighborhood, which includes a variety of garage and living space additions.
- b. The trapezoidal shape of this lot, combined with the existing position of the residence on the lot are special circumstances that make it very difficult for this property to accommodate a reasonable addition without a variance.
- c. The applicant's desire to construct a reasonable addition to this residence within the constraints of this property is not an unreasonable circumvention of the requirements of the Zoning Ordinance.

CONDITIONS FOR APPROVAL

1. The addition shall be constructed in accordance with a revised site plan showing a 3' variance granted.
2. All necessary permits shall be obtained from the Division of Building Inspection.
3. The variance is being granted only for the purpose of construction of the proposed addition on the southeast property line.

Chairman Brown asked Ms. Melton if she understood the findings and the conditions that were proposed for approval, or if she would like any additional time to review them. Ms. Melton replied that she understood them, and she could agree to abide by them.

The motion passed unanimously (Meyer absent).

2. **V-2010-74: DAVID TOOLE / HUGH JASS BURGERS, LLC** - appeal for a variance to reduce the required front yard from 20 feet to 0 feet in order to place a canopy over an existing patio in a Neighborhood Business (B-1) zone, on property located at 395 S. Limestone (Council District 3).

The Staff Recommended: Approval of a variance reducing the required front yard from 20' to 12', for the following reasons:

- a. Granting such a variance should not adversely affect the public health, safety or welfare, nor degrade the character of the general vicinity. With a 12' front yard, an awning patio cover would align with the outer edge of the building on the adjoining property to the north, and would be more in keeping with the character of this block of South Limestone.
- b. This block of South Limestone has a number of eating establishments with outdoor seating areas that have umbrellas or other types of cover. An awning cover with a 12' front yard setback would be compatible with those features and would complement the established streetscape.
- c. Strict application of the Zoning Ordinance would permit just a 10' deep covered area, which might have relatively limited utility and would provide sun and rain protection for only about 1/3 of the new patio area.
- d. In light of the manner in which this urban streetscape has been developed, such a variance is reasonable and would not result in a circumvention of the intent or requirements of the Zoning Ordinance.
- e. The circumstances surrounding this variance are not the result of the actions of the appellant. The

recent replacement of the four year old wooden deck with a masonry patio is authorized by the previous variance approved by the Board (V-2006-67: AKAMU Enterprises, LLC) on June 30, 2006.

This recommendation of approval is made subject to the following conditions:

1. The awning cover shall be erected in accordance with a revised site plan indicating a minimum front yard of at least 12' to be provided.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The variance is granted only for the purpose of installing a patio cover, and shall not be used to accommodate any other type of building addition.

Representation – Ms. Allison Grimes, attorney for the appellant, stated that she wished to hear the staff's report on their request. Chairman Brown replied that the staff had recommended approval of this appeal, and thought that the Board should first hear from the objector in this matter. Ms. Grimes stated that, while the applicant appreciated the staff's recommendation, it was their hope that the complete variance that they had requested would be granted by the Board. She said that the application requests a 0' front yard setback for this business.

Objections – Mr. Chris Lawrence, an employee with Kennedy Bookstore on South Limestone, was present to object to this application. He said that they received the notice letter, which is why he was present. He felt that the staff recommendation of the staff was reasonable, but not the 20' setback variance that the appellant was requesting. He thought that other businesses in the area would have the same feeling about this request.

Mr. Lawrence submitted a petition into the record, and circulated it to the Board, outlining concerns from some of the businesses in the area regarding the 20' variance requested. He repeated that the staff recommendation looked acceptable, and stated that he would remain for the duration of this hearing.

Chairman Brown asked Ms. Grimes to explain why the appellant was not in agreement with the staff's recommendation.

Appellant's Presentation – Ms. Grimes stated that she was representing the appellants, as well as the property owner, Elliston Properties, LLC. Also with her was Mr. Daniel Collins, B & W Awning, who distributed a rendering of the deck covering proposed in front of this business. She also said that the information distributed by Mr. Collins (exhibits) would serve as their presentation outline for this hearing.

She stated that the restaurant is in a Neighborhood Business (B-1) zone, and that there were three businesses in this building: Tolly Ho, e-Campus and the Hugh Jass Burgers restaurant. She stated that in 2006 a variance was approved by the Board to install the existing wooden patio in front of Hugh Jass Burgers. That variance was from 20' to 0' to allow the patio to be installed.

Ms. Grimes stated that the new owners have completely renovated the exterior of the building and want to invest in it further by placing an open-air fabric covering over the exterior patio in order to provide some shelter from the elements for the patrons of this restaurant. Her photos indicated that the patio had recently been repaired and that new pillars had been placed along its edge. Three photos were submitted that also superimposed the proposed patio covering in front of this building.

Ms. Grimes said that she wished to show that the canopy will be supported by aluminum poles that will be placed on the pillars that are already in place. When Mr. Collins applied for the requisite permit for the fabric canopy, despite the variance being granted previously, they were informed that another variance would be necessary.

Ms. Grimes requested that the full variance be approved, rather than the staff's recommended 12' setback. In their opinion, the 12' variance recommended by the staff negatively impacts the exterior of the building. She said that the owner and tenant have worked tirelessly to restore this building. In order to meet a 12' yard for the canopy, the pitch of the canopy would have to be more severe, as could be seen in Exhibit 6 of their handout. She said that a 12' setback would create an undue hardship upon the applicant. It would not allow the canopy to utilize the existing pillars that are already in place. This would also encroach on the useable space on the patio, and not achieve the aesthetic that the appellant was desired.

Ms. Grimes said that the staff recommendation would not allow the appellant full use of this patio. She said that it would also not allow full use of the investment required to be made to this property. She said that covering the entire patio would be more in keeping with the area's streetscape, and the use of umbrellas

recommended by the staff would only create more congestion in the patio area. She felt that the setback recommended by the staff would actually create more problems for the patrons of Tolly Ho and e-Campus—especially for patrons parking in front of those businesses and needing to pull out or back out onto South Limestone into on-coming traffic. She said that this would impair their vision and their ability to see other vehicles.

Ms. Grimes stated that the staff's recommendation would result in an inconsistent streetscape in this area. She submitted Exhibits 9-12 for this purpose, which were photographs of the closest businesses to Hugh Jass Burgers. She said that the 12' setback would not be consistent with the awning in front of Pazzo's, which was also made and installed by B & W Awning. Neither would it be consistent with the awning for Kennedy Book Store, which would be in line with the awning that they are proposing.

Ms. Grimes said that they are not requesting anything that has not been granted to other businesses in this area. Her client had already invested a lot of money into the business at this location. The location had a high degree of turnover during the past few years, and both the property owner and the applicant were hopeful that this business would not follow suit. In fact, the other tenants of the subject building, unlike Kennedy's, were in support of this endeavor. She felt that if there were any businesses in opposition to this request, one would expect the objections to come from one of those two in the same building.

While Ms. Grimes said she appreciated Kennedy's concerns, she said that the Kennedy Bookstore and Pazzo's were two businesses that already possessed what her clients hoped to install. She repeated that her photos (Exhibits 3-5) showed that their proposal would not detract from the streetscape, but actually would enhance it in this area. Their awning would not encroach into the right-of-way, and there would be ample room for pedestrians along the sidewalks on both streets on this corner lot. She said that their photos show that this is one of the few buildings that actually sits back from South Limestone Street, and that the awning would allow the proprietor to make use of the outdoor patio. She noted that this business was dependent upon this space, rather than outdoor patios to the rear of many businesses along this portion of South Limestone.

In conclusion, Ms. Grimes asked the Board to consider their request for a full variance of this setback provision, rather than the partial 12' setback recommended by the staff. They believed that it would not adversely affect the health, public safety or welfare of any citizens. Likewise, they did not believe that it would degrade any nearby business, but instead would enhance them. There was a reasonable request in keeping with the intentions of the Zoning Ordinance.

Board Questions – Mr. Stout asked how many patrons would be accommodated inside this restaurant. Ms. Grimes stated that the Division of Fire sets such limits, and that she did not have that information with her today. Mr. Stout asked if there would be seating downstairs and upstairs. Ms. Grimes replied that there is only seating proposed on the downstairs level. She said that the upstairs portion of this building is used by e-Campus.

Chairman Brown thanked Ms. Grimes, and asked to hear the staff's presentation at this time.

Staff Presentation – Mr. Marx presented the Staff Report on this application. He stated that the characteristics of the streetscape were somewhat subjective, which had been a difficulty in this case as well. He wanted to share with the Board the facts about the only two projections in a two-block stretch from Winslow Street to East Maxwell Street, of which he displayed photographs on the overhead projector. He displayed the awning for Pazzo's restaurant, and told the Board that it was installed as a result of their own business decision. It extended about 1/2 the distance from the front wall of the building to the sidewalk on South Limestone Street. He then showed a photo of the only other projection in this two-block stretch, which is at the Two Keys Tavern. That projection is very different from the other, as it is a flat-roofed structure that covers outdoor tables. It covers an area about 8' wide out of the 10' distance between the building and the sidewalk.

Board Questions – Mr. Stout asked to see the applicant's photograph of the Kennedy Bookstore, and asked about those front features on their canopy. Mr. Marx replied that there were canopies installed in the front of that building, but that they were supposed to be 3' behind the sidewalk. He said that they are not part of the streetscape of South Limestone known for restaurants and nightclubs. He thought that the bookstore building was somewhat isolated, as there are no other buildings like this one to the south.

Ms. Moore asked if variances were granted for either Kennedy's or Pazzo's. Mr. Marx wasn't sure about the awning for Pazzo's, but replied that the bookstore was granted a dimensional variance to construct their

canopies to a distance of 3' behind the sidewalk. However, from the photos, it appears that they may have exceeded that limitation.

Mr. Stout asked how far the Kennedy Bookstore canopy extended from the wall of the building to the edge of the canopy. Mr. Marx said that he was not sure of that dimension. Mr. Sallee responded that it could be estimated by viewing the photograph, and by looking at the car parked in front of that store. It appeared to be a compact car; and with that, he estimated that the canopy extended about 20' in front of that building. Mr. Stout asked if the canopy being requested today was about the same distance from that building. Mr. Marx replied that it is proposed to extend about 30' out from the building toward South Limestone, as measured from the building wall to the right-of-way, which led Mr. Stout to conclude that it is to extend about 10' farther out than the existing one at Kennedy. Mr. Marx replied that the subject building sets back farther from the street than does the Kennedy Bookstore building. He displayed an aerial photograph of this intersection on the overhead projector.

Mr. Stout then asked if the proposed canopy would extend closer to the street than Kennedy's canopy and sign. Ms. Grimes replied that her Exhibits #9-11 answered Mr. Stout's question. She said that their building sets back farther than any other building on this street. The awning that they are requesting is to be in exact alignment with the one for their neighboring business – Kennedy Bookstore. She said that they would not exceed the setback for Kennedy's canopies, nor would they request to cover the pedestrian sidewalk on the street. They are requesting the variance from 20' to 0'.

Mr. Stout viewed Exhibit 12, and again asked whether or not their canopy will be closer to the street than the existing one for Kennedy Bookstore. Ms. Grimes replied that it would not.

Chairman Brown asked about the site plan, and said that it appeared to him that the building was set back 30' from South Limestone. Mr. Marx replied that he was correct. Chairman Brown then asked if the staff's recommendation was for the canopy to extend out from the building only 18'. Mr. Marx replied in the affirmative, and said that the applicant was requesting that it extend out 30' and have a 0' setback from the street. He said that the reason for the staff's recommendation was that, although there was an issue with the support columns, if it extended any further, it would impair the usability of the 12' open area for tables and umbrellas, and that much space should remain available. Chairman Brown confirmed that the staff recommended that the canopy only be 18' deep, with which Mr. Marx agreed.

Mr. Stout asked Mr. Lawrence why they were objecting to this proposal, when Kennedy Bookstore had a canopy relatively similar to what was being requested here. Mr. Lawrence replied that the proposed materials were significantly different. Kennedy's canopy had a metal roof, unlike this proposal. Also, Kennedy Bookstore had maintained parking in front of their business, as have several others nearby businesses, and had provided their covering over an entrance to their store. He said that they do not service their customers underneath their canopy, other than an occasional sidewalk sale or similar event. Mr. Stout stated that he understood that, and respected his answer.

Mr. Stout was concerned that Exhibit #5 did not identify much difference between their request and what exists at Kennedy Bookstore, and for that reason was troubled by their objections. He felt that there would be no harm resulting from the appellant's request. Mr. Lawrence replied that his office is on the second floor, across the street and above the deck. He said that the recent construction was done over top of the existing deck, and in his opinion, the original deck was not designed for the addition of the canopy. He wasn't sure if it could support anything other than a canopy made of fabric. He said that the Awkward Moose was the business that originally obtained the variance and constructed the deck. Mr. Stout stated that he travels South Limestone daily, and it is an "outdoor street." He was still confused by the Kennedy's objections. Mr. Lawrence said that if it was proposed on their side of Winslow Street, he might not object, and that might also be the case for the business owners that signed the petition he submitted earlier in the hearing. He said that there are umbrellas outdoors in these areas, and not once in this entire area was there an existing awning from the front of the building right up to the sidewalk. Mr. Stout replied that appeared to be true, except for the bookstore building.

Mr. Griggs said that he had reviewed the petition twice, and it appeared to him that that the only objection is to how it will look. Ms. Moore stated that this request was for a variance, and it is not "a matter of right" that they receive permission to complete this construction.

Ms. Grimes stated that Mr. Roger Ladenberger had designed the patio, and that the rotten wood material on the former deck had, in fact, been replaced. B & W Awning will not be erecting a canopy that will not be sound and designed to withstand inclement weather. She said the reason for their lengthy presentation

today was that the staff recommendation would not provide this business with “what it needed to do.” She said that on either side of this business, Pazzo’s and Kennedy Bookstore have awnings that extend closer to the street than is recommended by the staff. She reminded the Board that a variance had already been granted to allow the patio to be located as it had been.

Mr. Marx stated that, while it had been asserted that the subject building was the furthest back from South Limestone in this area, there was actually one other building set back further than 30’. He displayed an aerial photo of this block on the overhead projector, and identified the subject building for the Board. He said that another building on the block had requested a front yard variance to 0’ from South Limestone Street years ago, but other business owners in the area objected to that request “because they did not want to be located in a canyon.” Instead, the Board required that a 5’ front yard be maintained at that location. Mr. Marx said that there are many perspectives to this current request, and many different variances that have been granted in this area.

Ms. Grimes replied that the property just mentioned by Mr. Marx involved a building and not for an open-air canopy and patio covering. She said that their current request does not involve the same type of construction.

Action – A motion was made by Mr. Stumbo to approve **V-2010-74: DAVID TOOLE / HUGH JASS BURGERS, LLC** – an appeal for a variance to reduce the required front yard from 20 feet to 0 feet in order to place a canopy over an existing patio in a Neighborhood Business (B-1) zone, on property located at 395 S. Limestone for the following reasons:

FINDINGS FOR APPROVAL

- a. Granting such a variance should not adversely affect the public health, safety or welfare, nor degrade the character of the general vicinity. ~~With a 12’ front yard, an~~ The proposed awning patio cover would align with the outer edge of the building on the adjoining property to the north, and would be more in keeping with the character of this block of South Limestone.
- b. This block of South Limestone has a number of eating establishments with outdoor seating areas that have umbrellas or other types of cover. An awning cover ~~with a 12’ front yard setback~~ would be compatible with those features and would complement the established streetscape.
- c. Strict application of the Zoning Ordinance would permit just a 10’ deep covered area, which might have relatively limited utility and would provide sun and rain protection for only about 1/3 of the new patio area.
- d. In light of the manner in which this urban streetscape has been developed, such a variance is reasonable and would not result in a circumvention of the intent or requirements of the Zoning Ordinance.
- e. The circumstances surrounding this variance are not the result of the actions of the appellant. The recent replacement of the four year old wooden deck with a masonry patio is authorized by the previous variance approved by the Board (V-2006-67: AKAMU Enterprises, LLC) on June 30, 2006.

CONDITIONS FOR APPROVAL

1. The awning cover shall be erected in accordance with ~~a revised the site plan indicating a minimum front yard of at least 12’ to be provided.~~
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The variance is granted only for the purpose of installing a patio cover, and shall not be used to accommodate any other type of building addition.

Discussion of Motion – Mr. Stumbo said that while there are several different businesses in this area, he felt that the extent of the requested canopy was in keeping with the character of this block, especially when one considered the Two Keys property and the other businesses. He felt that the requested canopy would be more aesthetically pleasing if it did not have the 12’ setback that was recommended by the staff.

Mr. Stout said that he felt that for the Board to be fair with this business, they should approve what they were requesting. He seconded Mr. Stumbo’s motion at this time.

Chairman Brown asked for any additional comments from the Board, but there were none offered. The votes on the motion for approval were as follows:

Ayes: Griggs, Stout, Stumbo

Nays: Brown, Moore, White

Absent: Meyer

The motion failed to carry, with a vote of 3-3.

After a pause, there were no other motions offered by the Board.

Discussion – Mr. Griggs asked if the appellant would consider the staff's recommendations, and said that the Board might consider that possibility next, if the appellant were so inclined. Ms Grimes replied that they were present at this hearing today because of the staff recommendation. She said that following it would cause her client undue hardship, and it would not permit a proper return on their investment for the use of their patio. They were willing to address any other questions from the Board, if necessary. Mr. Sallee replied in rebuttal that the standard for the Board to review is not whether the staff recommendation creates a hardship; but, rather, whether a strict application of the Ordinance would create an undue hardship. The difference here was that the Ordinance would require a 20' setback for the awning rather than the 12' setback recommended for it by the staff. Chairman Brown thanked the staff for providing this distinction.

Mr. Stout asked the appellant whether it would be reasonable to have the Board approve "something rather than to have nothing." Ms. Grimes said that she would need to defer this question to her clients as to whether to move forward in that direction. Her previous instructions were that, should they not prevail, that appeals were anticipated. She said that was not the direction in which she wanted to go, but that she would be glad to try and answer any questions about any objections to their original request.

Chairman Brown said that, since there were no further motions from the Board, he considered this matter as being concluded. He thanked Ms. Grimes for her presentation.

Note: The Board returned to a consideration of **V-2010-70: JACQUELINE L. MELTON** (above) at this time.

D. Administrative Review

1. **A-2010-69: KEITH McCOLLUM** - appeals for an administrative review to allow a portion of a wall sign to extend above the roof line of a building in a Highway Service Business (B-3) zone, on property located at 1050 E. New Circle Road (Council District 5).

The Staff Recommended: Disapproval, for the following reasons:

- a. As currently designed, the installed signage extends above the roof line of the building, on a projection/parapet that is not located on three sides of the existing building. As such, that signage must be considered as a roof sign, which is prohibited in all zones pursuant to Article 17-5(b) of the Zoning Ordinance.
- b. Although the total amount of signage has been reduced at this location, the amount of signage above the roof line has actually increased compared to the signage that existed prior to the refurbishment of the storefront.
- c. An extension of the parapet/roof projection at this storefront is a reasonable option that can be pursued by the appellant, which would allow the installed signage to remain where currently located in compliance with the requirements of the Zoning Ordinance.

The Division of Building Inspection will report at the public hearing.

Representation – Mr. Keith McCollum, owner of Modern Home Furniture, located at 1050 East New Circle Road (across from Sam's Club) was present for his appeal.

Chairman Brown asked to hear the Staff Presentation at this time.

Staff Presentation – Mr. Marx presented the Staff Report on this appeal. He said that it related to signage that had been recently installed on a storefront on East New Circle. He displayed a photograph of the sign, along with an older photo supplied by the appellant of how the signage along this wall appeared previously. The size and the height of a portion of the previous sign did not meet the Ordinance's limitations. He said that the current size of the sign is much reduced, and the issue for the staff that had been hard to rectify was that the portion of this sign that extends above the roof is much increased. The sign in question read "Modern Home Furniture" and, except for its extension above the roofline, would meet most other

requirements for a wall sign.

Mr. Marx stated that for this sign to remain, it must meet all the requirements for a wall sign, as roof signs were not permitted in the B-3 zone. One such means by allowing it to remain as is is that a parapet could be installed along the roofline along three sides of the building. In this case, there is a short parapet in place, but it does not extend along three sides of the existing building. The staff recommended a clear-cut solution to this problem—that a 14” parapet be installed along the roofline along three sides of the building. He said that would be a much better solution than moving the sign down, making it “out of balance” with the remainder of this building.

Building Inspection Comments – Chairman Brown asked what happened with the permitting of this sign. Mr. Dillon replied that, other than what was stated in reading the Staff Report, there was some confusion on the part of the appellant, and this sign was installed without the benefit of any permit.

Appellant’s Presentation – Mr. McCollum began by apologizing for installation of the sign without a permit. He said that he had assumed that his sign company contractor obtained the necessary permit. Prior to renovating the store, Mr. McCollum said that he had met twice with Mr. Greg Walker in the Division of Building Inspection, as well as his contractor, in an attempt to avoid this type of situation. Unfortunately, now in retrospect, he said that he did not ask the right questions.

Mr. McCollum said that one of his initial plans for this sign included adding, along the sides of the sign shown earlier in the photograph, the words “contemporary” and “furniture” to either side of their new sign. He said that Mr. Walker told him that he could not approve this proposed text addition, as it would not meet the Ordinance requirements. He said that although he tried to ensure that he wouldn’t do anything wrong, he then assumed that he had an approved sign design for the remainder. He also said that he pressured his contractor to install the sign by the end of the day on a Friday, but that he thought that the contractor already had obtained the sign permit. He apologized for this happening, because he did not want it to appear that he didn’t respect the regulations of the County.

Discussion – Mr. Griggs asked about the eight large banners that are currently on the store in addition to the sign in question. He said that had driven by the store on the way to this hearing, and wondered if the appellant thought that those signs complied with the Ordinance. Mr. McCollum said that he ordered those flags after seeing “Grand Opening” signs at the new CVS store, and at other locations. It was his understanding that those types of banners could be up for a week at a time, and then removed. He thought that could be done using flags and banners for brief periods. He did not know of any other restrictions about those types of signs.

Mr. Stout asked whether the sign in question could be enlarged to make it compliant. Mr. Marx replied that the rule reads that a parapet must wrap around at least three sides of the building to permit the wall sign to extend above the roofline. He thought that this restriction was intended for the sign to be placed according to the design of the building. It should not be a result of wall signs being erected, and parapets being constructed thereafter, just to allow for larger signage. Parapets generally have a broader purpose than just signage, such as hiding rooftop equipment or for architectural interest. Mr. Stout asked how tall the parapet would need to be for this sign. Chairman Brown replied that it would need to be at the “top of the letters” on the sign, or at an added height of about 14”, with which Mr. Marx agreed.

Mr. McCollum used several PhotoShop pictures to demonstrate how they could resolve this problem, but indicated that by doing this, their building would be “out of balance” with the rest of the center. Mr. Stout replied that the entire Gilson Plaza on this side of New Circle Road appeared unbalanced. Mr. McCollum agreed, and said that this was due to the hill that exists on this portion of East New Circle Road. He did not want the issue to be compounded for his neighbor’s business if he had to raise his parapet. He said that his building was constructed in 1961 and that he negotiated a lease to allow a refurbishment of the front of the store. He said that the staff’s solution would result in an added expense, and would create issues for his neighbor’s store as well. He felt that this would create a true hardship for his business.

Mr. McCollum displayed a photo of the neighboring business, which was significantly lower than his location. He felt that raising his building parapet would require the landlord to raise it on the adjoining building as well.

Mr. Stout said that he only could see one alternative, and that was to decrease the size of the sign, and that the easy answer was to decrease the height of the sign. Mr. Lawrence replied that he worried that just lowering the height of the letters would hurt his business. Mr. Stout said that he did not agree, and felt that

the lower height of the sign's letters would be superior to removing the sign entirely. Mr. McCollum said that he agreed.

Mr. McCollum said that he wished to be in compliance with the Ordinance, but that he did not have a budget to radically alter the sign. He showed a photo of the former signage, which covered some 270 square feet of area along the front of this store. He said that they had pared it down to 62 square feet in size, which resulted in a much more modern design. He felt that they had not "done a bad thing" to this building. He said that if the Board required the letters of the sign to be lowered to the height of the ones formerly there for Gilson Plaza, he would not be adverse. He felt that they would be able to update the front of the building in this way.

Mr. Stout asked the staff their opinion about this option. Mr. Marx said that there had been a significant size reduction for the sign. Mr. Sallee added that this issue is more about the lack of a parapet than anything else. Installation of a small parapet would allow the existing sign to obtain a permit. He said that a wall sign can extend up to six feet above the roof line when it is on a parapet on three sides of the building. He placed an altered photo on the overhead which showed a short parapet extending above the roofline, which would permit the sign to remain in place. Mr. Stout concluded by saying that this was yet another option for the applicant to pursue.

Action – A motion was made by Mr. Stout and seconded by Ms. Moore to disapprove **A-2010-69: KEITH McCOLLUM** – an appeal for an administrative review to allow a portion of a wall sign to extend above the roof line of a building in a Highway Service Business (B-3) zone, on property located at 1050 E. New Circle Road, for the reasons provided by the staff.

The votes on the motion for approval were as follows:

Ayes: Brown, Griggs, Moore, Stout, White

Nays: Stumbo

Absent: Meyer

The Chair announced that the motion carried.

Note: The Board returned to a consideration of **V-2010-70: JACQUELINE L. MELTON** (above) at this time.

E. **Conditional Use Appeals**

1. **C-2010-55: DANIEL SEXTON** - appeals for a conditional use permit to establish a campground/RV park in the Agricultural Rural (A-R) zone, on properties located at 4705 and 4721 Old Iron Works Road (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit for a temporary campground with RV facilities should not adversely affect the subject or surrounding properties, provided that the facility is managed on a daily basis by on-site personnel and is appropriately monitored to ensure compliance with recommended conditions. Reasonable assurance has been provided that sewage generated at the proposed facility can be effectively managed on a temporary basis and will be done in accordance with the requirements of the Fayette County Board of Health. Emergency response to a fire event will be facilitated by the installation of a fire hydrant on Old Iron Works Road, and all temporary gravel roads will be designed and constructed to support a large fire truck.
- b. All other public services and facilities are or will be available and adequate for the proposed temporary use. Garbage pick-up will be provided on a daily basis, potable water will be provided at ten conveniently located water stations distributed throughout the campground, and electric service will be provided to each of the 444 RV sites.
- c. The facility will be designed and managed to effectively handle different weather conditions that might be encountered during the World Equestrian Games. Under dry conditions, the extensive network of graveled drives will be sprayed with water as needed to control dust. All of the 444 individual parking sites have been located in relatively flat areas where RVs will be able to maneuver on grassed surfaces, even under wet conditions.
- d. During construction of the gravel roads, all topsoil removed will be stockpiled at an on-site location, and then replaced after the gravel is removed. The preservation of topsoil will facilitate the restoration of

the farm for a future agricultural use.

This recommendation of approval is made subject to the following conditions:

1. The facility shall be established and operated in accordance with the submitted application (including the supplemental information provided to the Board on June 25, 2010) and revised site plan dated July 22, 2010.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to initiating any grading or road construction or other activities subject to permitting, with an occupancy permit to be obtained prior to opening the campground.
3. The campground facility shall be established and operated in accordance with the requirements of the Fayette County Board of Health pertaining to solid waste removal, provision of potable water, and sewage collection and treatment.
4. The final design of the access points and layout of the temporary gravel roads shall be subject to review and approval by the Division of Traffic Engineering.
5. The two access points off of Old Iron Works Road shall be gated and locked, and only used for emergency response purposes.
6. The Lisle Road (State Route 1963) access shall be constructed in accordance with a permit from the Kentucky Transportation Cabinet.
7. All gravel roads shall have a minimum width of 20' and shall be designed and constructed to support a vehicle/truck weight of up to 94,000 pounds.
8. All gravel roads shall be sprayed with water on an as needed basis to control dust.
9. A fire hydrant shall be installed and be fully operational, at a location on Old Iron Works Road acceptable to the Division of Fire & Emergency Services, prior to opening the campground.
10. No temporary signs, including banners or streamers, shall be used in conjunction with this facility.
11. This conditional use shall be temporary in nature, and shall not remain in operation later than November 1, 2010.
12. No temporary structures (i.e., buildings, tents, etc.) shall be erected on any portion of the subject property for this use.
13. All topsoil excavated during road construction shall be stockpiled on site, properly contained to prevent erosion, and preserved for needed restoration activities. Rock and gravel shall be removed, topsoil returned to the excavated road beds, and disturbed areas seeded and strawed by December 31, 2010.

Mr. Marx stated that there were a number of letters submitted for this application, and he distributed them to the Board at this time. Chairman Brown indicated that one had been submitted by Mr. Mike Owens, former Chair of the Board of Adjustment.

Note: The Chair declared a recess to allow Board members time to review the letters submitted for this application. The Board returned from recess at 3:01 PM, with all members returning with the exception of Ms. Moore and Ms. White, who left the meeting at this time.

Objections – Ms. Knox Van Nagell, Director of the Fayette Alliance, was present to object. Her organization, along with the Kentucky Thoroughbred Association, the Fayette County Farm Bureau, the Rural Land Management Board, Hagyard Equine Medical Institute, the Fayette County Neighborhood Council, and area farmers and residents, all oppose this application. She entered a statement and proposed findings of fact to the Board. She felt that this proposal would jeopardize the health, safety and welfare of this community. It should be denied under KRS 100.237, for that reason.

Ms. Van Nagell said that this was a high intensity, non-agricultural use which would be contrary to the Rural Land Management Plan. She said that this land was classified in the Rural Land Management Plan as Core Agricultural and Rural Land (CARL). This Plan recommends such lands to protect our signature rural industries. She quoted from the Plan, as follows:

“Conditional uses permitted in this area should be those associated with agriculture. Non-agricultural conditional uses for this area should be kept to a minimum.”

Ms. Van Nagell felt that this use would also have an adverse impact upon the subject property. She said she was uncertain as to how the installation of so many gravel roads would allow the appellant to restore this land to a productive agricultural use. She said that many tree stands would be removed from the site, in violation of Article 26-5 of the Zoning Ordinance. The rates of \$60-\$90 per day for rental sites are low, but yet, this proposed use would require costly oversight. This would call into question the feasibility of this proposed use. She was also unsure of the traffic management plan which would be needed to allow large vehicles to successfully navigate this site, or travel to the Horse Park. She wasn't sure that Lisle Road

could handle the additional 400 RVs each day, travelling to and from the WEG. Also, she wasn't sure that there was a legally enforceable mechanism to ensure that the removal of the campsite would be done in a timely manner. She said that she wasn't sure how Building Inspection would ensure its closure. She also said that there was also no performance bonds proposed to ensure that the farm would be restored after the Games. She felt that this RV park would be disruptive to the area, and should be denied to uphold the Rural Land Management Plan.

Ms. Van Nagell said that the sewage proposal was problematic as well. She said that the septic tank can only hold the waste of 15 RVs at one time. This system can only be implemented with the approval of waivers from the Board of Health. She said that the FRAC tank was only sized to hold the waste of 210 RVs, or only about ½ of the total number expected to use this facility. She asked who would have the responsibility to ensure that the waste removal would be smooth and seamless; and given the proximity of the Royal Spring Aquifer, that was of great importance. The EPA Consent Decree would dictate the importance of proper sewage disposal from this conditional use.

Ms. Van Nagell felt that this could be a precedential decision by the Board. She said that the need to promote agri-tourism and to fully prepare for the World Equestrian Games should not be done at the expense of our signature local industry or our natural waterways. The need for this use was questionable, given Midway's recent approval of a 500-space RV park. She said that there are still hotel rooms available as well. She strongly urged the Board to disapprove this use.

Questions – Chairman Brown asked Mr. Murphy about Ms. Van Nagell's statement that there would be no performance bond for this use. He asked if his client would be agreeable to providing such a surety. Mr. Murphy replied that they had considered it, but that the requirement under condition #13 would mandate that this use be completely concluded by December 31st. Mr. Murphy said that, for this reason, a surety was not as important for their use. Still, they were agreeable to the posting of a surety and they also discussed the amount necessary to remove the gravel and replace the topsoil. They estimated that cost at \$15,000, but they would be willing to post a bond of twice that amount, to cover any contingencies. Mr. Murphy said that this would mean that the Division of Engineering could collect a Letter of Credit, to ensure completion of the work. Still, he did not feel that this would be necessary, as they fully intended to meet the requirement for the gravel roads necessary for this use to be totally removed by the end of this year.

Chairman Brown asked Ms. Van Nagell if this information would alleviate any of her concerns. She replied that while this does demonstrate "good faith" on the part of the applicant, the amount of the bond would not be sufficient to restore the agricultural viability of the farm. She did appreciate the applicant's offer, but thought that there was a greater question of the magnitude of this non-agricultural conditional use. She felt that restoring the farm would be more involved than just removing the gravel roadways.

Objections (cont.) – Jeannie Owens, retired General Manager of Cobra Farm, was present to object. She said that she had been involved in agriculture for more than 35 years, tending to cattle and horses during that time. She was concerned about the compaction of the soil that would result from this use. Farmers from the 40s and 50s underestimated the result of mechanized farm equipment on their farm soils. This discovery was what led to no-till farming. Some of the soil compaction would be complicated by the rains that usually occur in November and December. She said that on their farm, they installed a horse ring in October, and it was April before they could apply sand to it and use it. Ms. Owens said that \$15,000 would not cover the cost of removing the gravel from this temporary campground. In conclusion, she asked the Board to disapprove this use.

Mr. Billy Van Pelt was present representing the Fayette County Rural Land Management Board. He distributed some exhibit information from the RLMB to the Board at this time. Mr. Van Pelt said that the Rural Land Management Plan was adopted by the Planning Commission in 1999, and that it guides the treatment of Core Agricultural and Rural Lands. He read from a portion of the Plan, describing its purpose:

"The policy emphasis for land in this category should be for preservation and enhancement of the land for agricultural purposes in order to ensure the continued viability of the local agricultural economy."

He said that page 4-5 of the second handout dealt with environmentally sensitive areas, and pointed out that the subject site was adjacent to the Royal Spring Aquifer. He read a second excerpt from that page, which read:

"The Royal Spring Aquifer is particularly susceptible to pollution because it is located in an

irregular limestone region with sinkholes, underground streams and caverns. The sinkholes, streams and caverns allow pollutants to easily enter the water system. Within a matter of hours the pollutants can travel from Lexington to Georgetown.”

Mr. Van Pelt also presented the RLMB map of protected farms in Fayette County. He said that the subject farm was adjacent to about 500 acres of protected farmland. The purpose of the PDR program was to preserve and protect large areas of agricultural land and he felt that this proposed use was not in keeping with the Rural Land Management Plan. He felt that ignoring plans that had been approved by the Planning Commission would set a bad precedent. He said that he worried that other farms would also try to obtain similar conditional uses in the rural portion of the county. During the timeframe that this use was to cease, a Comprehensive Plan update would be beginning, and that he would not want to see this use cited as a precedent for a zone change. He urged the Board to deny this request.

Ms. Carrie Johnson was present on behalf of the Fayette County Farm Bureau to object. She read a letter into the record outlining the FCFB's objections to this conditional use request.

Mr. Don Robinson, representing the Kentucky Thoroughbred Association, as well as the Kentucky Thoroughbred Owners and Breeders (KTOB), appeared in opposition. He read a letter of opposition into the record. He stated that these groups represented over 200 area horse farms in Fayette County. They had several concerns with this use, such as ensuring that the operating management could deal with the breakdown of vehicles in this area, and having professional staff on hand to handle health issues. Transport of patrons from this site to the WEG would also be an important consideration in approval of this use. He felt that the posting of a forfeiture bond was also an important consideration for this conditional use. He asked that there be some assurance that the stored top soil could be returned to its original consistency. His groups were concerned about this precedent, and urged the Board to disapprove this use, as there were already some 500 campsites under professional management in Woodford County already available for the WEG.

Mr. Robinson said that he was a third generation farmer and had had some work done on his farm recently by contractors using good rates. He did not believe that the gravel roads could be removed and the soil replaced on the subject farm for only \$15,000.

Ms. Barbara Sherrod, former President and current Board Member of the Spindletop Neighborhood Association, was present to object. The Spindletop Subdivision monitors all proposed uses in their area. She said that they spoke with several property owners in this immediate area three years ago when the Stockyard proposal was on the table. She said that Mr. Sexton never returned her phone calls at the time, although his mother and sister did return her calls. She said that she visited the mobile home park because they were interested in its condition. She didn't notice much difference between it and the condition of the Ingleside Mobile Home Park.

Ms. Sherrod said that they were concerned about the awkward intersection at the corner of Old Iron Works and Georgetown Road. She said that, in part, was what led Hagyard Equine to construct a \$50,000 gravel road behind their hospital to ensure emergency access during the Games. She felt that the 444 RV sites could have a wide variety of vehicles parked on this farm. She said that her neighborhood was very much against this application, and she asked the Board to deny this use.

Appellant's Presentation – Mr. Murphy was present for this appeal, along with Mr. Daniel Sexton, Ms. Shelia Flynn, Manager; and Mr. John Williams, Financial Manager. He reminded the Board of the people that had testified on their behalf last month.

Mr. Murphy said that the staff had revised their report to now recommend approval of their request, subject to 13 conditions, which was done at the Board's request due to several concerns expressed at the hearing. Mr. Murphy repeated that the appellant was also agreeable to adding a 14th condition requiring the posting of a bond or letter of credit.

Mr. Murphy said that while a lot of issues had been raised at this hearing by the objectors, he hoped to update the Board on number of items that had been addressed by the appellant in the past month. Every objection raised at this meeting could have been raised about the use of Spyglass Farm for parking for the Games, which Mr. Murphy understood, was being used entirely for graveled parking. Unlike their property, the parking proposed for that facility would have in-and-out traffic movements. The same arguments could have also been made against holding the Games here at all. The County had no experience in holding these Games, so perhaps, they shouldn't do so. He was disappointed that a small group representing the

equine industry was here today objecting to some planned accommodations for tourists to an equine event. He said the objections would be more understandable if Mr. Sexton's facility were proposed to be a permanent one. Like the Games, and the parking on Spyglass farm, this use "will also be gone" later this year.

Mr. Murphy thought it was ironic that Hagyard, Davidson & McGee was present to object; given the conditional use they were granted. He displayed their conditional use site plan on the overhead projector. Their temporary road would actually be permanent, as he cited their Certificate of Land Use Restriction which identified that the farm gate must remain closed after the Games are over. Their roads, on the other hand, would be removed at the end of the WEG, and a bond posted to ensure their removal.

Mr. Murphy next displayed a map of the Royal Spring Aquifer on the overhead projector. He said that their site was located outside of the aquifer area. He said that the boundary of the aquifer was on the eastern side of the nearby railroad line. Mr. Sexton already knew this, as he developed a subdivision on the north side of Lisle Road years ago, where this issue was also raised. Mr. Murphy said that their use would not drain into that aquifer.

Mr. Murphy said that they had held a number of meetings with the planning staff in the intervening month. He said that the appellant had also met with representatives of the Health Department in the past month. They asked Ms. Flynn to prepare a comprehensive operations manual for this use, which she had done. He thought that it may become a future model for other locations in the State. He said that this manual deals with a number of contingencies, including insurance and even provides administrative guidelines.

Mr. Murphy said he wanted to address the reason that the Board questioned the timing of this appeal last month. He said that his clients had been approached by Short's Travel, which was the official housing agency for the WEG early in 2009. At that time, there was another temporary facility proposed nearby in Scott County. Short's thought that facility would be sufficient to supply any RV needs for the area of the subject property. However, the Scott County facility had since morphed into the Midway RV park. That facility was for "a higher-end camper." Since then, Short's had discovered that a more economical RV park was needed in this area, and that was why this application was not made to the Board a year ago, and not because Mr. Sexton had not made the effort.

Mr. Murphy said that there was a great need for this facility. Last month, the Board learned that half of the 6,000 volunteers would be from out of town. Many would be coming to Lexington in their RVs. He said that the Midway facility would be operated by a company out of Nashville, whereas Mr. Sexton would market to folks driving their own RVs to Lexington. While there would be some limited ability for visitors to rent an RV from Northside RVs and park at this location, most would park their own RVs at this proposed facility. He was surprised that there were some complaints that their rates were too low, given some of the hotel and home rental rates that have been advertised for occupancy during the WEG. Their rentals would be for space for RV parking. He said that some 200 of their spaces would be for WEG volunteers. Their facility would be different from the one at Midway.

Mr. Murphy said that there were very few facilities available for RV parking like the one they are proposing. One was on Old Frankfort Pike, behind the Good Old Days Barbeque restaurant, in Woodford County. He said that there was another one in a mobile home park in Fayette County. Chairman Brown asked about the facility at the Horse Park. Mr. Murphy replied that he understood that it was reserved for use by judges in the WEG competitions.

Mr. Murphy said that their facility had been listed on the official web-site for a couple of months, but was identified as not being able to take reservations yet "pending approval" by the LFUCG. He said that there was a large group waiting to take reservations to use this RV park, hopefully beginning next Monday.

Mr. Murphy said that Mr. Sexton was a licensed RV park operator, and was a licensed mobile home park operator as well. He was experienced in operating this type of facility, and that they had more mobile homes in this area than there are houses in the City of Midway. He said that they have security and maintenance personnel on site, and people that can provide any needed service to the RVs. They had golf carts that could travel throughout the site. Mr. Sexton also had the construction equipment necessary for this facility. He was uniquely situated and qualified to operate this conditional use.

Mr. Murphy displayed the submitted site plan on the overhead projector, and said that this farm was 90 acres in size. He said that Mr. Peck was here last month, and told the Board that he was in favor of this use, and that Mr. Sexton was a good neighbor. They agreed to close off the entrances proposed on Old

Iron Works Road in response to Mr. Peck's concern, and that they wanted their RV guests to access this site via Lisle Road and its signalized intersection with Georgetown Road. They did not want vehicles to use the intersection of Old Iron Works Road and Georgetown Road. He reminded the Board that there was an agreement with Short's Travel Service to serve a number of recreational vehicles.

Mr. Murphy reminded the Board that they had been in contact with the Fayette County Health Department, which had asked them to obtain a letter of permission from the Georgetown Municipal Water and Sewer Service, regarding their ability to accept the wastewater from this site. Mr. Murphy said that they have been told by the GMWSS that they can obtain such a letter next Monday, when the director returns to the office. He said that was the only outstanding issue as far as the Health Department was concerned. He said that the Fire Department had also given their approval of the design and the location of the new fire hydrant on Old Iron Works Road that would be installed by Mr. Sexton.

Mr. Murphy stated that they were able to obtain water from the Kentucky American Water Company for this use. He identified the ten "water stations" proposed on the submitted site plan. They consider this an essential service to the vehicles that would have water holding tanks on board. Vehicles that do not have this ability would not be permitted to gain access to this facility.

Mr. Murphy said that there are five different ways proposed to obtain sewer service at this RV park. The first was from a station set up to collect the waste from holding tanks on the RVs, near the facility entrance to Lisle Road. It would be a 1,500-gallon underground tank that would pump the waste from the RVs into this tank. This tank would then be unloaded onto a FRAC tank, which was mobile. This was common for this type of operation. He displayed a photo of the proposed 21,000-gallon FRAC tank on the overhead projector. He said that this is "state of the art" equipment for events all over the country. There would be two of these on-site, and they can be hitched to a tractor-trailer and hauled off-site. They would then be emptied at the GMWSS treatment plant, but one would always be on site, and have personnel ready to assist. Mr. Murphy said that the water and waste tanks for RVs are detachable, so that they can be driven in a smaller vehicle and emptied. In fact, he said that their staff would also be willing to use their electric carts to visit an RV site, and take the tanks for emptying. He said that the RV could also move to the underground tank and be drained with a hose. He said that the Health Department wanted to ensure that the waste tanks could be emptied first, before water was filled on the RVs, and that they had worked with the Health Department to make sure as to how this would be done. Hogue Septic Tank Company from Wilmore was also on board to come to the RV sites to empty the waste from the individual RVs.

Mr. Murphy said that solid waste and trash were planned to be emptied on a daily basis at this facility. They have Orkin ready to provide daily pest control for the RV sites, as needed. Mr. Sexton had 24-hour on-site security secured for this park, as well. Mr. Murphy said that Kentucky Utilities would provide electricity to this campground through standard RV hook-ups, supplied by a few temporary poles. These connections would not require the use of any generators.

Mr. Murphy said that, after the WEG concludes, the electric poles would be removed, the water supply would be dismantled, the gravel roads would be removed, along with the road base, and the stockpiled topsoil would be replaced where the roadways were located. Mr. Murphy said that a farm tractor weighs twice as much as an RV, and they traverse the farm twice a week, just to mow. There would be soil compaction from either activity. Mr. Murphy said that, while there would be some stray gravel, gravel was just limestone. He said that he thought that limestone in the soil was the reason that the horse farm industry located here long ago.

Mr. Murphy said that he was disappointed that these objections were being made for their proposed use, but not earlier for Spyglass Farm. He said that, as important as it was having convenient parking for the WEG, it was also important for this use to be here for RV visitors to those Games. Their opinion was that this facility would be far better than a Wal-Mart parking lot for recreational vehicles. He reminded the Board that RVs are welcome to park in Wal-Mart parking lots, but would have none of the amenities offered at this location.

Despite the objections heard at this meeting, Mr. Murphy said that Mr. Sexton's professionals can manage this facility, because they have done this before. He said that their use was a conditional use in the Agricultural zone, and in fact, that was the only zone that permits such a facility. This use should be permitted in the zone, or else a text amendment should be pursued at the Planning Commission level.

Mr. Murphy said that they received an estimate from C&R Asphalt and G&G Paving that identified the \$15,000 amount for the gravel needed for their roadways. They were willing to double that amount on a

surety. He said that Mr. Sexton would use his equipment to install the gravel, as part of his other businesses.

Mr. Murphy said that the only precedent from this use would be that, for a one-time event, that there would be places for people to visit and stay here in Lexington-Fayette County. He repeated their extensive planning for the operation of this RV park. He told the Board that Mr. Sexton did not have any outstanding violations for his mobile home park. He felt that they had addressed all of the issues raised today, and all of the issues raised last month.

Mr. Murphy said that there were new facilities constructed at the Horse Park for the WEG, in an agricultural zone. This was done to allow tourists to come and celebrate our rural and equine heritage. There needs to be this same type of activity done to permit all accommodations and needs for our tourist visitors. There must be a place for the visitors to park their cars and park their RVs. They would be using this activity to allow the farm to be fully restored.

Mr. Murphy said that if anyone tried to use this approval as a precedent, then the applicant could be told about the extensive reviews that were needed to permit this facility. They could say that this applicant had to obtain many approvals from many different regulatory agencies; and at the end of a few months, they had to remove it all. He thanked the Board for their patience, and said that the appellant sincerely felt that this was an important part of hosting the World Equestrian Games.

Discussion – Chairman Brown asked the staff about condition #11, as recommended. Mr. Marx replied that as of November 1st, it was recommended that there be no RVs at this location. Chairman Brown also asked about the recommendation that the gravel roadways be removed by December 31st. Mr. Marx replied that there was some unpredictability with the weather in fall, and that the Board might want to hear of an estimate of how many days would be necessary to replace the topsoil. He said that there may be some possible flexibility to this condition.

Mr. Stout asked why the recommendation was that rentals could remain until November 1, when the WEG was scheduled to end on October 16th. Mr. Murphy said that Short's Travel Service told them that some workers would be needed to dismantle part of the facilities for "a couple of weeks" following the Games. Mr. Stout asked the staff how Spyglass Farm was able to do what they have done, for a parking lot, and if the LFUCG approved that use. Mr. Marx replied that the Horse Park was a state agency and exempt from zoning regulations. Mr. Stout asked how they garnered exemption. Mr. Sallee answered that the staff believed that Spyglass had a lease or contract with the Horse Park for the parking lot use.

Mr. Stout asked if most of the RVs coming to this campground would be pulling 4-wheel vehicles. Mr. Murphy replied that some would, but he wasn't sure of the percentage that would. Mr. Stout asked if there would be a shuttle service provided to take RV owners to and from the Horse Park. Mr. Murphy replied that they are working on that with the WEG and their official provider of ground transportation. That company was GameDay, and he said that Mr. Sexton was talking with them about a shuttle to and from the WEG. Mr. Murphy said that some of the RV owners would likely drive their own cars back and forth to the Games. Mr. Stout said that he believed that this would be a traffic mess from early morning until late in the afternoon.

Mr. Stout asked when the RVs would be required to be on site prior to the start of the WEG, and stationary. Mr. Murphy replied that some may stay a few days, for a week, or for the duration of the Games. Mr. Stout said that the patrons would, in his opinion, be pulling their own vehicles and going to and from the Games in them. He thought that not all of the renters would be volunteers at the Games. He asked if the RVs would be stationary. Mr. Murphy said that the RVs would not be going to and from the Games. Mr. Stout thought that there needed to be some sort of transport for the RV owners, and that not everyone would be attending all 16 days of the WEG.

Mr. Griggs asked about the gravel and their design for the smaller stones on top, and how concrete could be made of the stones if there was dirt mixed in once it was gathered. Mr. Sexton replied that the top layer of gravel could be used at his concrete plant across Lisle Road in Scott County. Mr. Griggs asked how the gravel could be cleaned for use in concrete. Mr. Sexton replied that the top gravel would be clean, but the heavy base stone would be stockpiled in Scott County for use in future development. He said that #2 stone could be used in almost every type of road construction. He said that he had use of concrete on numerous sites that he owns.

Mr. Stout asked, since the Kentucky Horse Park leased Spyglass Farm, if its use exemption also becomes

possible there. Mr. Sallee replied that it would enjoy the same zoning exemption due to the lease with the Horse Park.

Mr. Stumbo said that he appreciated the appellant's attempts to answer many of the questions that the Board had last month. He asked what recourse the Board would have if the farm's restoration was not carried out by December 31st. Mr. Marx suggested a 14th condition be added to ensure the bond surety would dictate that this be done. Mr. Stumbo did not believe that \$30,000 was sufficient to ensure that all the gravel would be removed from this site. He said that he did not compare this use to either the WEG or to Spyglass Farm, as those are very different properties. He said that this RV park was a very different type of request, and that he was not yet comfortable with this proposal. He thought that the bond amount was not high enough to clean up the farm if December 31st came and went. Mr. Murphy replied that normally, this was not done with a conditional use, as they thought that they were going "above and beyond" with their request to post a bond. However, they would agree to use the cost estimate of the LFUCG Division of Engineering to determine the proper amount. He said that when a subdivision plat is ready to record, then there is a surety required to make sure that the subdivision work is able to be completed. Engineers submit cost estimates, checked by Mr. Ron St. Clair in Engineering, based upon their private contractor's bids for the completion of the work. They would agree to a minimum of \$30,000 or the amount recommended by Mr. St. Clair.

Mr. Murphy said that he questioned that Spyglass Farm also would have the Horse Park's zoning immunity. He said that parking was needed and appropriate there. Just as much, the RV travelers need a place to park their vehicles as well.

Rebuttal – Ms. Van Nagell said that the tree removal issue she raised earlier came directly from the Staff Report. She said that Article 26 of the Zoning Ordinance requires tree stands to be protected. She did not equate the construction of a stadium at the Horse Park, and the leasing of Spyglass Farm for parking, both of which were exempt from zoning control, to be the same as for this proposed use. She said that the Agricultural zone was not the only place that an RV park could locate. She said that the B-5P zone would also allow that use, and there were five such locations of B-5P zoning in the County—all of which were near interstate highway interchanges.

Ms. Van Nagell said that she had spoken with Mr. Luke Mathis at the Health Department; and that according to him, the operating procedures have not been agreed upon, but must meet both local and State approval. She said that, in light of the Consent Decree, this proposed use had a huge environmental impact. Lastly, she said that the Hagyard's emergency access road was not similar to this proposal, since it does not involve the removal of two miles of gravel. She said that if the Board were at all inclined to approve this use, that a substantial bond be required, before approval was given. She thought that an independent party should determine the amount, which she estimated as \$100,000-\$200,000.

Mr. Van Pelt said that preservation and enhancement of the agricultural land should be the top priority with this proposal. The continued viability of the rural area should be the goal. He asked why such a huge precedent should be made for a single-use event such as this campground. He said that the 1999 Rural Land Management Plan, approved by the Planning Commission, would begin to be dismantled if this conditional use were ultimately approved at this location.

Mr. Luke Mathis, Fayette County Health Department, was present. He said that the Health Department had not yet approved this use, although they were reviewing the plans that had been submitted. He said that on Wednesday of this week, another packet of information had been submitted to his office for review.

Chairman Brown said that condition #3 in the staff recommendation would require the approval of this use by the Health Department. Mr. Mathis agreed, and said that he was not here to dispute the staff recommendation, but to report that the appellant understood that this use could not begin until the Board of Health approval had been obtained. He recommended that the appellant not advertise the park until the Health Department had granted its approval. Chairman Brown thanked Mr. Mathis for attending this meeting.

Mr. Robinson said that restoring this land to an agricultural use was an important factor. He was worried that the #2 rock base proposed for their roads would become embedded into the soil. He felt that there had been no precedent by the Division of Engineering to restore a farm. He was also worried that the calendar would hinder the farm's restoration, as it begins to get cool and rains quite a bit beginning in November.

Ms. Owens said that she agreed with Mr. Stumbo's concerns and that those of Mr. Robinson were very

important. She thought that the RVs would work the gravel deep into the soil, and that this “would become a muddy mess.” Mr. Sexton asked Ms. Owens if she was familiar with the construction of roadways. She replied affirmatively. Mr. Sexton said that there are “screen shakers” to clean #2 rock. He said that he would remove the rock and re-use it, and it would be stored in Scott County. He told the Board that he would only need to remove 6” of topsoil to provide the gravel base for their roadways, and that it would meet his engineer’s specifications. He said that he was trying to get the objectors to understand that he was now in the process of restoring the property back to a horse farm. He asked for the opportunity to conduct this use, and take care of the WEG visitors. He did not think that the RVs would put much mud into the gravel; but if they did, that would become his problem. He felt that they had tried to do everything that had been asked of them, and that they would operate a fine facility, if given the chance.

Mr. Murphy said that Mr. Sexton had already embarked on a process of restoring this farm presently, and he displayed several photographs on the overhead projector. The photos showed the brush that had been removed and stockpiled. He said that there were fences in disrepair and overgrown fence lines. There was a photo shown of an old mobile home on this farm as well. He said that a year from now, there would be a much better farm than was there presently. He said that they agree to remove this use by the end of the year. He said that a mesh material can be placed on the ground underneath the gravel to protect the ground below. He said that there would be many compliments of the appearance of this farm a year from now.

Action – A motion was made by Mr. Stout to disapprove **C-2010-55: DANIEL SEXTON** – an appeal for a conditional use permit to establish a campground/RV park in the Agricultural Rural (A-R) zone, on properties located at 4705 and 4721 Old Iron Works Road, for the following reasons:

FINDINGS FOR DISAPPROVAL

1. The applicant has failed to produce evidence that the proposed use will not have an adverse impact upon the subject property or the surrounding neighborhood.
2. The Board has heard evidence that the use of the property as a temporary RV park for 444 RVs and the associated traffic coming and going from the sites, including tank trucks proposed for daily sewage hauling will dramatically compact the gravel into the soil on the property, and adversely impact the agricultural use. No reliable evidence was presented that adequate renovation is possible.
3. The roads giving access to the proposed RV park are not adequate to safely serve that use. Old Iron Works Road is an old, narrow rural road with few improvements and little available shoulders to allow large RVs to maneuver in and out of the site. Although access is proposed off of Lisle Road, that access is also somewhat off of a narrow two lane road. That road already serves a densely populated mobile home park, such that the proposed dramatic increase in traffic on this road creates public safety issues.
4. Public health, safety and welfare are also partly at risk. The concerns noted above are compounded by the multiple daily trips by dump trucks providing all sanitation services to the proposed 444 RV sites.

Mr. Griggs seconded the motion.

Votes on the motion were as follows:

Ayes: Griggs, Stout, Stumbo

Nays: Brown

Absent: Meyer, Moore, White

The motion for disapproval carried, 3-1.

IV. **BOARD ITEMS** - The Chair announced that any items a Board member wishes to present would be heard at this time. There were none.

V. **STAFF ITEMS** – Chairman Brown announced that any item a Staff member wishes to present would be heard at this time. There were none.

- VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be August 27, 2010.
- VII. **ADJOURNMENT** – Since there was no further business, the Chair declared the meeting adjourned at 5:12 PM.

Peter Brown, Chairman

James Griggs, Secretary